



UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

**Caption in compliance with D.N.J. LBR
9004-2(c)**

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Against All Odds USA, Inc.*

In re:

AGAINST ALL ODDS USA, INC.,

Debtor and Debtor-in-Possession.

Case No. 09-10117 (DHS)

Judge Steckroth

Chapter 11

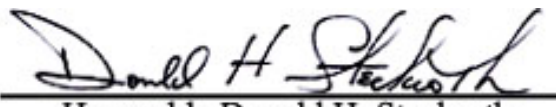
TIN: 22-3391747

**Hearing Date: May 28, 2009 at 10:00
a.m., EDT**

**ORDER PURSUANT TO SECTIONS 105(a), 363 AND 365 OF THE BANKRUPTCY
CODE AND BANKRUPTCY RULES 6004, 6006 AND 9014 (I) AUTHORIZING THE
SALE OF SUBSTANTIALLY ALL OF THE DEBTOR'S ASSETS, FREE AND
CLEAR OF LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS;
(II) APPROVING THE ASSET PURCHASE AGREEMENT WITH NEW DEAL, LLC;
(III) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN
EXECUTORY CONTRACTS AND UNEXPIRED LEASES;
AND (IV) GRANTING RELATED RELIEF**

The relief set forth on the following pages, numbered two (2) through twenty-
three (23) is hereby **ORDERED**.

DATED: 5/28/2009


Honorable Donald H. Steckroth
United States Bankruptcy Judge

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Debtor: Against All Odds USA, Inc.

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THIS MATTER having been opened to the Court by Against All Odds USA, Inc., the within debtor and debtor-in-possession (the “**Debtor**”),¹ by and through its attorneys, Ballon Stoll Bader & Nadler, P.C., upon the motion (the “**Sale Motion**”) for entry of orders pursuant to §§ 105, 363 and 365 of chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rules 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) (A) (i) approving procedures (the “**Bidding Procedures**”) in connection with the sale (the “**Sale**”) of all or substantially all of the Debtor’s assets (the “**Assets**”), (ii) authorizing the Debtor to enter into an Asset Purchase Agreement (the “**APA**”) with New Deal LLC (the “**Purchaser**”) in connection therewith, (iii) approving the payment of a break-up fee on the terms and conditions set forth in the APA, and (iv) the setting of related auction and sale hearing dates; and (B) (i) approving the sale of the Assets free and clear of all interests, including all liens, claims and encumbrances; (ii) authorizing the assumption and assignment of certain Assumed Agreements (hereinafter defined); and (iii) approving certain related relief, all as more fully described in the Sale Motion; and the Court having jurisdiction to consider the Sale Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and consideration of the Sale Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Sale Motion and the Bidding Procedures having been provided to (i) the United States Trustee for the District of New Jersey, (ii) counsel to Bank of America,

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Sale Motion or the APA, as applicable.

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N.A., (iii) entities who have affirmatively requested notice under Bankruptcy Rule 2002, (iv) all entities known or reasonably believed to have asserted a lien, encumbrance, claim or other interest in the assets that the Debtor seeks to sell, (v) the Master Service List, and (vi) all parties that have either expressed an interest in purchasing the Debtor's Assets or who the Debtor believes may express an interest in purchasing such Assets; and the Court having granted a portion of the relief requested in the Sale Motion at a hearing (the "**Bidding Procedures Hearing**") held on May 7, 2009 (the "**Bidding Procedures Order**") [docket no. 296] pursuant to which the Debtor was authorized to enter into the APA with the Purchaser; and an auction having been scheduled for May 27, 2009 (the "**Auction**") in accordance with the Bidding Procedures Order; and the Debtor having served on May 11 and 12, 2009, in accordance with the Bidding Procedures Order, a Cure Notice (as such term is defined in the Bidding Procedures Order) upon each non-Debtor counterparty to the Debtor's executory contracts and unexpired leases which the Debtor may seek to assume and assign; and the Debtor not receiving any Qualified Bids; and the Debtor having determined that the APA constitutes the highest and otherwise best bid for the Assets; and the Court having considered the Sale Motion, the opposition thereto, and the arguments of counsel, if any; and the evidence presented in support of the balance of the relief requested in the Sale Motion at a hearing before the Court on May 28, 2009 (the "**Sale Hearing**"); and upon the full and complete record of the Debtor's chapter 11 case; and it appearing that the Court has jurisdiction over this matter; and it further appearing that the legal and factual bases set forth in the Sale Motion, at the Bidding Procedures Hearing, and at the Sale Hearing establish just cause for the relief granted herein; and it further appearing

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that the relief requested in the Sale Motion is in the best interests of the Debtor, its creditors, and all other parties in interest in this chapter 11 case; and for the reasons set forth by the Court on the record at the Sale Hearing; therefore, for good cause shown,

IT IS HEREBY FOUND AND DETERMINED THAT:

A. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014.

B. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

C. The Court has jurisdiction to grant the relief requested in the Sale Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

D. The statutory predicates for the relief sought in the Sale Motion are §§ 105, 363 and 365 of the Bankruptcy Code, and Rules 2002, 6004, 6006 and 9014 of the Bankruptcy Rules.

E. Notice of the Sale (the "**Sale Notice**") has been served in accordance with the Bidding Procedures Order.

F. As evidenced by the affidavits of service filed with the Court, and based on the representations of counsel at the Sale Hearing: (i) there was proper, timely, adequate and sufficient notice of the Sale Motion and the Sale Hearing, (ii) such notice was good and sufficient and appropriate under the circumstances of the Debtor's case, and reasonably

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calculated to reach and apprise all holders of Claims and Interests (hereafter defined) about the Sale, and (iii) no other or further notice of the Sale Motion, the Sale Hearing, or the sale of the Assets is required.

G. A reasonable opportunity to object or be heard with respect to the Sale Motion and the relief requested therein has been afforded to all interested persons and entities in this case.

H. As demonstrated by: (i) the testimony and other evidence proffered or adduced at the Sale Hearing; and (ii) the representations of counsel made on the record at the Sale Hearing, the Debtor has conducted the sale process in a non-collusive, fair and good faith manner that was in compliance with the Bidding Procedure Order. A reasonable opportunity has been given to any interested party to make a higher or otherwise better offer for the Assets.

I. The Debtor was prepared to hold an Auction, but no Qualified Bids, other than the bid by the Purchaser, were made. No Potential Bidder or other person appeared at the Auction.

J. The terms and conditions set forth in the APA, and the Sale to the Purchaser pursuant thereto, are fair and reasonable and the purchase price payable to the Debtor pursuant to the APA constitutes the highest or otherwise best offer obtainable for the Assets. The Debtor has demonstrated that its sale of the Assets to the Purchaser in accordance with the terms of the APA is based on sound business justifications, and such Sale is in the best interests of the Debtor's estate.

K. The Debtor (i) has full corporate or other power to execute, deliver and perform its obligations under the APA and all other documents contemplated thereby or entered into in

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connection therewith, and the sale of the Assets by the Debtor has, in each case, been duly and validly authorized by all necessary corporate or similar action, (ii) has all of the corporate or other power and authority necessary to consummate the transactions contemplated by the APA, and such other documents contemplated thereby or entered into in connection therewith, and (iii) has taken all action necessary to authorize and approve the APA and such other documents contemplated thereby and the consummation by them of the transactions contemplated thereby or entered into in connection therewith. No third party consents or approvals, other than those expressly provided for in the APA, are required for the Debtor to consummate such transactions.

L. Approval of the Debtor's entry into the APA and the consummation of the Sale at this time are in the best interests of the Debtor, its estate, creditors and other parties in interest.

M. The Debtor has demonstrated compelling circumstances and a good, sufficient, and sound business purpose and justification for the Sale prior to, and outside of, a plan of reorganization or liquidation in that, among other things, the Sale enables the Debtor to yield the highest value for the Assets for the Debtor's creditors.

N. The APA and the Sale were negotiated, proposed and entered into by the Debtor, the Purchaser and the Committee without collusion, in good faith, and from arm's-length bargaining positions. Neither the Debtor, the Purchaser nor the Committee has engaged in any conduct that would cause or permit either the APA or any other related agreement to be avoided under § 363(n) of the Bankruptcy Code.

O. Because, among other things, the sale of the Assets to the Purchaser has been proposed in good faith, the Purchaser is a good faith purchaser under § 363(m) of the Bankruptcy

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Code and, as such, is entitled to all of the protections afforded thereby. In the absence of a stay pending appeal, the Purchaser will be acting in good faith within the meaning of § 363(m) of the Bankruptcy Code in closing the Sale at any time after entry of this Order, notwithstanding the provisions of Bankruptcy Rule 6004(h).

P. The consideration provided by the Purchaser pursuant to the APA (i) is fair and reasonable, (ii) is the highest or otherwise best offer for the Assets being purchased by such Purchaser, (iii) will provide a greater recovery to the Debtor's estate than would be provided by any other available alternative, and (iv) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia.

Q. The sale of the Assets to Purchaser will be a legal, valid, and effective transfer of the Assets and will vest Purchaser with all right, title, and interest to the Assets free and clear of all (i) claims against and interests in the Debtor, and (ii) liens, claims or encumbrances against, interests in, and pledges of, the Assets (collectively, the "**Claims and Interests**" or if the context so requires, the "**Claims or Interests**") except as otherwise provided in this Order.

R. The Debtor may sell the Assets free and clear of all Claims and Interests of any kind or nature whatsoever, except as otherwise provided in this Order, because in each case, one or more of the standards set forth in § 363(f)(1) through (5) of the Bankruptcy Code has been satisfied. Those holders of Claims and Interests who did not object, or who withdrew their objections, to the Sale Motion are deemed to have consented pursuant to § 363(f)(2) of the Bankruptcy Code. Those holders of Claims and Interests who did object fall within one or more

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of the other subsections of 363(f) of the Bankruptcy Code and are adequately protected by having their Claims and Interests that are secured by valid liens, security interests and similar encumbrances, if any, attach to the net proceeds of the Sale ultimately attributable to the property against or in which they assert such Claim or Interest, with the same validity, priority and effect that existed immediately prior to the consummation of the Sale and subject to any and all rights, claims and defenses that the Debtor and the Committee may have with respect thereto.

S. The consideration provided by the Purchaser pursuant to the APA is fair and adequate, represents consideration deemed valuable in law and constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and other applicable law. The APA has not been entered into with the intent to hinder, delay or defraud any of the Debtor's creditors or other parties in interest.

T. The Debtor has demonstrated that it is an exercise of its sound business judgment to assume and assign certain of its executory contracts and unexpired non-residential real property leases (each, an "**Assumed Agreement**" and collectively, the "**Assumed Agreements**"), as modified by the terms of any lease modification, cure, consent and other agreements (the "**Lease Assignment Agreements**"), in connection with the consummation of the Sale, and the assumption, assignment and sale of the Assumed Agreements is in the best interests of the Debtor, its estate, and creditors. The Assumed Agreements being assigned to the Purchaser, and the Assumed Liabilities being assumed by the Purchaser, are an integral part of Assets being purchased under the APA and, accordingly, such assumption, assignment and sale

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of the Assumed Agreements and Assumed Liabilities are reasonable, enhance the value of the Debtor's estate, and do not constitute unfair discrimination.

U. The Purchaser has (i) to the extent necessary, cured or provided adequate assurance of cure, of any default existing prior to the date hereof with respect to the Assumed Agreements, within the meaning of 11 U.S.C. §§ 365(b)(1)(A) and 365(f)(2)(A), and (ii) to the extent necessary, provided compensation or adequate assurance of compensation to any party for any actual pecuniary loss to such party resulting from a default prior to the date hereof with respect to the Assumed Agreements, within the meaning of 11 U.S.C. § 365(b)(1)(B) and 365(f)(2)(A). The Purchaser has demonstrated adequate assurance of future performance within the meaning of 11 U.S.C. §§ 365(b)(1)(C), 365(b)(3) (to the extent applicable) and 365(f)(2)(B).

V. The Sale must be approved and consummated promptly in order to preserve the viability of the business subject to the Sale as a going concern, to maximize the value of the Debtor's estate. Time is of the essence in consummating the Sale.

IT IS ORDERED AS FOLLOWS:

1. The Sale Motion is granted in all respects, as further described herein.
2. All objections (if any) to the Sale Motion or the relief requested therein that have not been withdrawn, waived, or settled, and all reservations of rights included in such objections, are overruled on the merits.
3. The Debtor and the Committee are each authorized to execute the APA or other related documents and agreements contemplated thereby or entered into in connection therewith

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and to consummate all transactions, and take any other actions, contemplated by, or necessary or appropriate to effectuate, the APA, in accordance with this Order.

4. The APA, and all of the documents, agreements (including, but not limited to, any ancillary agreements to be entered into pursuant to the APA), and transactions contemplated thereby or entered into in connection therewith shall be, and hereby are, approved in all respects. The Debtor and the Committee are each authorized and empowered to execute, deliver, and perform under such agreements, in accordance with this Order.

5. The Debtor's sale of the Assets to the Purchaser in accordance with the terms of the APA is hereby approved free and clear of all Claims and Interests in accordance with § 363(f) of the Bankruptcy Code, except as otherwise provided in this Order.

6. Pursuant to § 363(b) of the Bankruptcy Code, the Debtor is authorized and empowered to perform its obligations under and comply with the terms of the APA and all other documents and agreements contemplated thereby or entered into in connection therewith, and to consummate the Sale, pursuant to and in accordance with the terms and conditions of this Order, the APA and such documents and agreements.

7. This Order and the APA (including, without limitation, the approval of the APA and the transactions contemplated therein) shall be binding in all respects upon all creditors of and holders of equity interests in the Debtor (whether known or unknown), any holders of Claims and Interests, all applicable successors and assigns of the Purchaser, the Debtor, the Committee, and any subsequent trustees appointed in the Debtor's chapter 11 case or upon a conversion to chapter 7 under the Bankruptcy Code and shall not be subject to rejection.

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8. The sale of the Assets to the Purchaser pursuant to the APA shall constitute a legal, valid, and effective transfer of the Assets, and shall vest the Purchaser with all right, title, and interest of the Debtor in and to the Assets free and clear of all Claims and Interests, except as provided in this Order, in accordance with § 363(f) of the Bankruptcy Code.

9. The consideration provided by the Purchaser for the Assets pursuant to the APA constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia.

10. The consideration provided by the Purchaser for the Assets pursuant to the APA is fair and reasonable and the Sale may not be avoided under § 363(n) of the Bankruptcy Code or otherwise.

11. Each and every federal, state, and local governmental agency or department is hereby directed to accept any and all documents and instruments necessary or appropriate to record and give effect to the Sale, and to transfer the Assets to Purchaser free and clear of all Claims and Interests except as provided in this Order. Without limiting the foregoing and except as provided in this Order, this Order is and shall be effective as a determination that, upon the closing, all Claims and Interests existing against any of the Assets conveyed to the Purchaser have been and hereby are adjusted and declared to be unconditionally released, discharged, and terminated, and shall be binding upon and govern the acts of all entities, including, all filing agents, filing officers, administrative agencies or units, governmental departments or units, secretaries of state, federal, state and local officials and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or

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otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to the Assets. Upon the closing, except as provided in this Order, all Claims and Interests existing against any of the Assets shall be forthwith deemed removed and stricken and all rights, benefits, and privileges associated with any approval or license shall be deemed fully vested in and held by the Purchaser free of all Claims and Interests.

12. This Court retains jurisdiction to enforce and implement the terms and provisions of this Order, the APA, any waivers and consents thereunder, and of each of the agreements and documents executed pursuant to or in connection therewith in all respects, including, but not limited to, retaining jurisdiction to (a) compel delivery of the Assets to the Purchaser, (b) compel delivery of the Purchase Price or performance of other obligations under the APA owed by or to the Debtor or the Committee, (c) resolve any disputes arising under or related to the APA, or any of the agreements and documents executed pursuant thereto or in connection therewith, (d) interpret, implement, and enforce the provisions of this Order against any person, and (e) protect the Purchaser against the assertion of any Claims and Interests against the Assets.

13. The provisions of this Order authorizing the sale of the Assets free and clear of Liens and Claims (with such Liens and Claims to attach to the proceeds of the sale of the Assets) shall be self-executing, and neither the Debtor, the Purchaser nor any other party shall be required to execute or file releases, termination statements, assignments, cancellations, consents or other instruments to effectuate, consummate and/or implement the provisions hereof with respect to such sale; provided, however, that this paragraph shall not excuse such parties from performing any and all of their respective obligations under the Agreement. Without in any way

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limiting the foregoing, Purchaser is empowered to execute and file releases, termination statements, assignments, consents, cancellations or other instruments to effectuate, consummate and/or implement the provisions hereof with respect to such sale.

14. Upon entry of this Order and closing of the Sale, Wicked Fashions, Inc. ("**Wicked**") and Kenny Khym and their respective predecessors, successors, assigns, affiliates, subsidiaries, agents, parents, officers, directors, shareholders, attorneys, representatives and any other person or entity claiming through Wicked and Kenny Khym (collectively, the "**Releasors**") hereby forever release, acquit and discharge the Debtor and the Committee, including the following solely in their capacity as such for the Debtor and the Committee (as applicable) and not in their individual capacity: agents, parents, affiliates, officers, directors, shareholders, employees, accountants, attorneys, heirs, executors, predecessors, successors, administrators, assigns, bankruptcy estates, trustees, plan administrator, plan trustees, liquidation trusts, other representatives and any other person or entity claiming through the Committee or the Debtor (the "**Released Parties**") from and against any and all losses, claims, debts, liabilities, demands, charges, complaints, obligations, promises, acts, omissions, agreements, costs, expenses, damages, injuries, suits, judgments, actions, suits or causes of action whatsoever, of whatever nature, whether know or unknown, suspected or unsuspected, foreseen or unforeseen, fixed or contingent, liquidated or unliquidated, matured or unmatured, in law or equity that any or all of the Releasors ever had, now have or hereafter can, shall or may have, against the Released Parties; *provided, however*, that the releases set forth in this paragraph shall not in any manner or

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respect release or discharge the Released Parties from their obligations, covenants, representations, warranties and agreements set forth in the APA.

15. Closing of the APA and the transactions contemplated therein and thereby do not effect a *de facto* merger or consolidation of the Debtor and the Purchaser or result in the continuation of the Debtor's business under the Purchaser's control. The Purchaser is not the *alter ego* of, a successor in interest to, or a continuation of the Debtor, nor is the Purchaser otherwise liable for the Debtor's debts and obligations, unless specifically provided for in the APA or pursuant to this Order.

16. The terms and provisions of the APA and all related ancillary documents shall be binding on the parties thereto, and the provisions of this Order shall be binding in all respects upon, and shall inure to the benefit of, the Debtor, its estate and creditors, the Committee, the Purchaser and its successors, and assigns, and any affected third parties, including, but not limited to, all persons asserting a Claim or Interest in the Assets, notwithstanding any subsequent appointment of any trustee(s) under any chapter of the Bankruptcy Code, as to which trustee(s) such terms and provisions likewise shall be binding. Nothing in this Order shall relieve the Purchaser or the Debtor from any liability it may have to the other under any express, unambiguous writing by either party in connection with the APA or the transactions contemplated thereby.

17. The failure specifically to include any particular provisions of the APA in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the APA be authorized and approved in its entirety in accordance with this Order.

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Case No. 09-10117 (DHS)

Caption of Order: ORDER PURSUANT TO SECTIONS 105(a), 363 AND 365 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULES 6004, 6006 AND 9014 (I) AUTHORIZING THE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR'S ASSETS, FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS; (II) APPROVING THE ASSET PURCHASE AGREEMENT WITH NEW DEAL, LLC; (III) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (IV) GRANTING RELATED RELIEF

18. The APA and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto and in accordance with the terms hereof, without further order of the Court, provided that any such modification, amendment, or supplement does not have a material adverse effect on the Debtor's estate.

Bank of America Secured Claim

19. Bank of America, N.A., successor-by-merger to Fleet National Bank ("**BofA**"), holds an allowed secured claim against the Debtor in the approximate amount of \$3,264,446.59 as of the Petition Date, together with postpetition interest, any attorneys' fees and costs incurred by BofA and any reimbursement obligations of Debtor to BofA in connection with that certain Letter of Credit No. 64131023 in the amount of \$95,062.50 as of the Petition Date, together with postpetition interest, and attorneys' fees and costs incurred by BofA (the "**BofA Secured Claim**"), as a result of certain loans and other financial accommodations provided to the Debtor by BofA prior to, and following, the filing of this bankruptcy case, which claim includes principal and interest that has accrued prior to, and following, the filing of this bankruptcy case.

20. Notwithstanding anything to the contrary set forth in the Sale Motion, the APA or this Order, the BofA Secured Claim is: (a) secured by BofA's duly-perfected first priority security interests in, and liens on, *inter alia*, all of Debtor's assets, including but not limited to, the Acquired Assets and the Retained Assets, as such terms are defined in and construed under the APA (the "**BofA Pre-Closing Liens**"), and BofA has, and will continue to have, after entry of this Order and until payment in full of the BofA Secured Claim, legal, valid, allowed, enforceable, non-avoidable and continuing duly-perfected first priority security interests in and

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liens on (i) substantially all of the Debtor's assets, including but not limited to the Acquired Assets and the Retained Assets, and (ii) the proceeds of the sale, including, but not limited to, the Plan Fund, as such term is defined in and construed under the APA (the "**BofA Post-Closing Liens**"), and no disbursements from or adjustments to the Plan Fund shall be made until the BofA Secured Claim has been paid in full; (b) an allowed, fixed, legal, valid, binding, and enforceable claim against the Debtor and its estate; and (c) not subject to any contest, objection, recoupment, defense, counterclaim, offset, claim of subordination, claim of re-characterization, claim of avoidance of any nature, attack or challenge under the Bankruptcy Code, other applicable non-bankruptcy law, or otherwise.

21. At the Closing, the BofA Secured Claim, in an amount to be set forth in an agreed upon payoff letter from BofA to the Debtor (the "**Payoff Letter**"), shall be paid in full via wire transfer to the account set forth in the Payoff Letter.

22. Upon payment in full of the BofA Secured Claim as set forth herein, BofA shall promptly release the BofA Pre-Closing Liens and the BofA Post-Closing Liens, , and file, or authorize the Debtor to file, UCC-3 termination statements with the Secretary of State of New Jersey and any other state where BofA filed a financing statement. In addition, upon the payment in full of the BofA Secured Claim as set forth herein, BofA shall provide such other and further documents and instruments as may be reasonably requested by the Debtor or the Committee in order to release the BofA Pre-Closing Liens and the BofA Post-Closing Liens, including, but not limited to, promptly notifying any depository bank that BofA's interest in the Debtor's deposit account has terminated.

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23. Pursuant to that certain Merchant Agreement, as amended, by and among BA Merchant Services, LLC ("**BA Merchant Services**"), BofA (collectively with BA Merchant Services, "**BA Merchant Services/Bank**"), and the Debtor, dated as of August 30, 2008 (the "**Merchant Agreement**"), BA Merchant Services/Bank provides credit card processing services to the Debtor. BA Merchant Services/Bank's rights as a secured creditor under the Merchant Agreement, including its right to establish a funded cash reserve, are set forth in the Stipulation between the Debtor and BA Merchant Services/Bank, entered contemporaneously with this Order, and are not affected by the provisions of this Order.

Pyramid Secured Claims

24. Notwithstanding anything to the contrary herein, the security interests and liens of (i) Pyramid Walden Company, L.P., (ii) Holyoke Mall Company, LP and (iii) Crystal Run Newco, LLC (collectively the "**Secured Landlords**") in their collateral, as defined in section 23.19 of the leases between the Secured Landlords and the Debtor (collectively the "**Collateral**") shall continue on and after the assumption and assignment of the leases between the Secured Landlords and the Debtor (collectively the "**Leases**") notwithstanding the sale of the Collateral, and the sale of the Collateral shall be subject to the security interests and liens of the Secured Landlords and not free and clear of such liens and security interests notwithstanding anything to the contrary contained in this Order, the Sale Motion, the APA, or any document filed or served in connection with the Sale Motion. Notwithstanding anything contained herein to the contrary, the Secured Landlords agree, upon assumption and assignment of the Leases, to subordinate their security interests (as defined in section 23.19 of the Leases, as modified) regarding Purchaser's

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inventory and equipment, to the primary security interest, if any, of any purchase money lender or Cosigner of Purchaser. .

25. Notwithstanding anything to the contrary contained in this Order, the Sale Motion or the APA, upon assumption and assignment of the leases (collectively the “**Pyramid Assumed Leases**”) between the Debtor and (i) the Secured Landlords, (ii) Crossgates Mall Company Newco LLC, (iii) EklecCo Newco LLC, (iv) Poughkeepsie Galleria LLC, and (v) Carousel Center Company, LP, the Purchaser assumes liability for all accrued but unbilled rent and charges under the Pyramid Assumed Leases

26. At the Closing, the Purchaser shall pay the secured claim of Pyramid Walden Company, L.P. (“**PW**”) in the amount of \$141,138.36 under the rejected lease between PW and the Debtor in full via wire transfer.

**Assumption, Assignment and Sale
of Assumed Agreements**

27. Pursuant to §§ 105(a), 363 and 365 of the Bankruptcy Code, and subject to and conditioned upon the Closing, the Debtor's assumption, assignment and sale to the Purchaser, and the Purchaser's assumption at Closing on the terms set forth in this Order, the APA, and the Assumed Agreements, as modified by the Lease Assignment Agreements, is approved, and the requirements of §§ 365(b)(1), 365(b)(3) (to the extent applicable) and 365(f)(2) of the Bankruptcy Code with respect thereto are deemed satisfied. The Lease Assignment Agreements hereby are approved and the Assumed Agreements are hereby assumed at Closing according to their terms, as amended by the Lease Assignment Agreements to the extent applicable.

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28. The Debtor is authorized, in accordance with §§ 105(a), 363 and 365 of the Bankruptcy Code, to (a) assume and assign to the Purchaser, conditioned and effective upon the Closing of the Sale, the Assumed Agreements identified on **Exhibit A**, which exhibit may be supplemented or modified upon agreement of the Debtor, the Purchaser and the non-debtor party to the Assumed Agreement, at any time prior to the Closing, free and clear of all Claims and Interests of any kind or nature whatsoever, and (b) execute and deliver to the Purchaser such documents or other instruments as may be necessary to assign and transfer the Assumed Agreements to the Purchaser.

29. With respect to the Assumed Agreements identified on Exhibit A hereto, (a) at Closing, the Assumed Agreements shall be transferred and assigned to, and following the assumption and assignment, shall and shall be deemed valid and binding and remain in full force and effect for the benefit of, the Purchaser in accordance with their respective terms, notwithstanding any provision in any such Assumed Agreement (including those of the type described in § 365(b)(2) and (f) of the Bankruptcy Code) that prohibits, restricts, or conditions such assignment or transfer, and, pursuant to § 365(k) of the Bankruptcy Code, the Debtor shall be relieved from any further liability with respect to the Assumed Agreements after such assignment to and assumption by the Purchaser; (b) each such Assumed Agreement is an executory contract of the Debtor under § 365 of the Bankruptcy Code; (c) the Debtor may assume each such Assumed Agreement in accordance with § 365 of the Bankruptcy Code; (d) the Debtor may assign each such Assumed Agreement in accordance with §§ 363 and 365 of the Bankruptcy Code, and any provisions in any Assumed Agreement that prohibit or condition

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the assignment of such Assumed Agreement or allow the party to such Assumed Agreement to terminate, recapture, impose any penalty, condition renewal or extension, or modify any term or condition upon the assignment of such Assumed Agreement, constitute unenforceable anti-assignment provisions which are of no force and effect but only in connection with the assignment of each Assumed Agreement to Purchaser, and all such provisions in any Assumed Agreement shall be fully enforceable after the assignment of each Assumed Agreement to Purchaser; (e) all other requirements and conditions under §§ 363 and 365 of the Bankruptcy Code for the assumption by the Debtor and assignment to the Purchaser of each such Assumed Agreement have been satisfied and (f) upon (i) Closing, with respect to Assumed Agreements identified on Exhibit A, (ii) the Purchaser shall be fully and irrevocably vested in all right, title and interest of each such Assumed Agreements.

30. If an objection is or has been filed pursuant to the Bidding Procedures Order with respect to the cure amount under any Assumed Agreement, the dispute with respect to the cure amount may be resolved consensually, if possible, by the parties, or, if the parties are unable to resolve their dispute, by the Court. During the pendency of a dispute relating to cure amount under an Assumed Agreement, the Purchaser shall pay the undisputed cure amount and escrow any reasonably disputed cure amount pending agreement of the parties or further order of the Court, in which case the pendency of the dispute relating to the cure amount shall not prevent or delay the assumption or assumption and assignment of such Assumed Agreement.

31. The cure amounts set forth on Exhibit A attached hereto and any cure amounts once resolved by agreement or by the Court (collectively, the "Cure Amounts") are the true,

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correct, final and fixed amounts, and only amounts, that are required to be paid upon assumption of the Assumed Agreements pursuant to §§ 365(b)(1)(A) and (B) of the Bankruptcy Code (except as otherwise has been or may be agreed to in a signed writing between the Debtor and the lease counterparty) and the Purchaser is directed to pay such amounts under §§ 105, 363(b) and 365 of the Bankruptcy Code upon assumption of such Assumed Agreements. The Cure Amounts shall not be subject to further dispute or audit (except as otherwise has been or may be agreed to in a signed writing between the Debtor and the lease counterparty), including any based on performance prior to the time of assumption, assignment and sale, irrespective of whether such Assumed Agreement contains an audit clause. The payment of the applicable Cure Amounts (if any) shall (a) effect a cure of all monetary and nonmonetary defaults existing under the Assumed Agreements as of the date of assumption and assignment, (b) compensate for any actual pecuniary loss to such non-Debtor party resulting from such default, and (c) together with the assumption of the Assumed Agreement by the Debtor, constitute adequate assurance of future performance thereof.

32. The Purchaser shall be responsible for any and all unpaid year-end adjustments, whether accruing prior to or after the effective date of the assignment of such lease assumed by the Debtor, when such charges become due in the accordance with the terms of such leases.

33. The Purchaser has demonstrated adequate assurance of future performance with respect to the Assumed Agreements and has satisfied the requirements of the Bankruptcy Code, including, without limitation, §§ 365(b)(1) and (3) and 365(f)(2)(B) to the extent applicable.

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34. There shall be no rent accelerations, assignment fees, increases or any other fees charged to the Purchaser as a result of the assumption, assignment and sale of the Assumed Agreements. The validity of the assumption, assignment and sale to the Purchaser or its designee shall not be affected by any dispute between the Debtor and another party to an Assumed Agreement regarding the payment of any amount, including any cure amount under the Bankruptcy Code.

35. Any party that may have had the right to consent to the assignment of its Assumed Agreement is deemed to have consented to such assignment for purposes of § 365(e)(2)(A)(ii) of the Bankruptcy Code and otherwise if it failed to object to the assumption and assignment.

36. Pursuant to §§ 105(a), 363 and 365 of the Bankruptcy Code and except as provided in this Order, each non-Debtor party to an Assumed Agreement hereby is forever barred, estopped, and permanently enjoined from raising or asserting against the Debtor, the Purchaser, its affiliates or the property of any of them: (i) any fee, monetary or nonmonetary default, breach, claim, pecuniary loss, liability or obligation (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, senior or subordinate) arising under or related to the Assumed Agreement existing as of the date of assumption and assignment or arising by reason of the Closing (other than the Cure Amounts), including without limitation under any Agreement with respect to any tenant improvement obligations, recoupment rights with respect to tenant improvement payments, rent, percentage rent, common area charges, real estate taxes or utilities or other charges owing under the Agreement (including any amounts

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owed to the landlord pursuant to any "true-up" provisions with respect to any of the foregoing for any portion of the current lease year which elapsed prior to the Closing), and (ii) any condition to assignment or objection to the assumption and assignment of such non-Debtor party's Assumed Agreements.

37. Except as provided in the APA or this Order, after the Closing, the Debtor and its estate shall have no further liabilities or obligations with respect to any Assumed Liabilities and all holders of such claims are forever barred and estopped from asserting such claims against the Debtor, its successors or assigns, its property or its assets or estate.

38. Notwithstanding the provisions of Bankruptcy Rule 6004(h) and Bankruptcy Rule 6006(d), this Order shall not be stayed for ten days after the entry hereof, but shall be effective and enforceable immediately upon issuance hereof. Time is of the essence in closing the transactions referenced herein, and the Debtor, the Purchaser and the Committee intend to close the Sale as soon as practicable. Any party objecting to this Order must exercise due diligence in filing an appeal and pursuing a stay, or risk its appeal being foreclosed as moot.

39. The provisions of this Order are nonseverable and mutually dependent.

40. Pursuant to § 365(k) of the Bankruptcy Code, effective upon the Closing and assumption and assignment of the Assumed Agreements to the Purchaser, the Debtor shall be relieved from any further obligations under or related to the Assumed Agreements.

41. All entities who are presently, or on the Closing Date may be, in possession of some or all of the Assets are hereby directed to surrender possession of the Assets to the Purchaser on the Closing Date.

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42. Nothing contained in any plan of reorganization or liquidation confirmed in this case or the order of confirmation confirming any such plan shall conflict with or derogate from the provisions of the APA or the terms of this Order.

EXHIBIT "A"

ASSUMED AGREEMENTS AND CURE AMOUNTS

EXHIBIT A: ASSUMED NON-RESIDENTIAL LEASES

Count	Store #	Landlord	Mall	City, State	Lease Cure Amount (Pre and/or Post Petition) **	Administration Amounts Agreed To	Lease Modification Signed by Landlord*
1	1	GGP	Woodbridge Mall	Woodbridge, NJ	\$81,444.52	\$1.82	Yes
2	6	GGP	Willowbrook Mall	Wayne, NJ	\$52,782.17	NA	Yes
3	20	GGP	Staten Island Mall	Staten Island, NY	\$53,896.39	\$5,137.56	Yes
4	36	GGP	Buckland Hills Mall	Manchester, CT	\$44,296.18	\$1,794.00	Yes
5	31	K/Simon	Hamilton Mall	Mays Landing, NJ	\$41,191.07	NA	Yes
6	34	K/Simon	King of Prussia Mall	King of Prussia, PA	\$120,973.47	NA	Yes
7	46	K/Simon	Lehigh Valley Mall	Whitehall, PA	\$78,440.44	NA	Yes
8	15	Simon	Brunswick Mall	East Brunswick, NJ	\$42,834.25	NA	Yes
9	17	Simon	Livingston Mall	Livingston, NJ	\$82,289.23	NA	Yes
10	18	Simon	Galleria Mall	White Plains, NY	\$75,209.38	NA	Yes
11	27	Simon	Ocean County Mall	Toms River, NJ	\$60,385.58	NA	Yes
12	29	Simon	Franklin Mills Mall	Philadelphia, PA	\$68,787.72	NA	Yes
13	41	Simon	Arundel Mills Mall	Hanover, MD	\$74,464.40	NA	Yes
14	53	Simon	Potomac Mills	Woodbridge, VA	\$210,795.87	NA	Yes
15	16	Pyramid	Palisades Center Mall	West Nyack, NY	\$84,346.90	NA	Yes
16	22	Pyramid	Holyoke Mall	Holyoke, MA	\$65,798.30	NA	Yes
17	23	Pyramid	Carousel Center Mall	Syracuse, NY	\$6,399.18	NA	Yes
18	28	Pyramid	Walden Galleria Mall	Cheektowaga, NY	\$67,270.14	NA	Yes
19	30	Pyramid	Crossgates Mall	Albany, NY	\$147,795.63	NA	Yes
20	65	Pyramid	Poughkeepsie Mall	Poughkeepsie, NY	\$69,501.53	NA	Yes
21	13	Pyramid	Crystal Run Mall	Middletown, NY	\$50,668.20	NA	Yes
22	10	Glimcher	Jersey Gardens Mall	Elizabeth, NJ	\$117,000.00	NA	NA ***
23	44	Wilmorite	Marketplace Mall	Rochester, NY	\$11,281.82	NA	Yes
24	25	Jager	Fairground Mall	Reading, PA	\$32,000.00	NA	Yes ****
25	11	PREIT	Hudson Mall	Jersey City, NJ	\$53,723.07	NA	No
26	9	Westfield	Garden State Plaza	Paramus, NJ	\$65,245.94	NA	NA ***
* Debtor has signed all Lease Modification Agreements.							
** All objections have been resolved with Lease Modification Agreements or by agreement with the respective landlord.							
*** Debtor is not seeking a Lease Modification Agreement on these properties.							
**** Jager has conditioned its Lease Modification on approval from its "lender."							